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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/894,351	10/27/1997	KLAUS REDECKER	306.35565X00	8887

7590 09/08/2004

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EXAMINER	
FELTON, AILEEN BAKER	
ART UNIT	**PAPER NUMBER**
3641	

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	08/894,351	REDECKER ET AL.	
	Examiner	Art Unit	
	Aileen B. Felton	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *07 June 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 8-31* is/are pending in the application.

4a) Of the above claim(s) *5,8,11-26 and 28-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,9,10,27,31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-4, 9-10, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blau et al., in view of Lund et al. '059, Wardle et al., Highsmith et al., Yoshida et al. '446 and Redecker et al. '485.

Blau et al. teach the basic invention which includes tetrazole fuel, with various oxidizers, including metal peroxides, perchlorates, nitrates, and mixtures thereof. Note the Abstract, col. 2, lines 30-32, col. 6, lines 1-21 and claim 26, part (a) with mixtures of oxidizers. Further detail is found at col. 5, lines 22-55 for fuels, and additives at col. 6, lines 31-57. Substitution of specific notoriously well known ingredients, amounts or specific mixtures thereof would have been obvious to one of ordinary skill in the art. Note Lund et al. '059 col. 5, lines 1-25, e.g., as well as "Table 3" with a plurality of oxidizers, and claim 1 which claims mixtures of oxidizers. Wardle et al. teach zinc peroxide at col. 3, lines 20 and 22. Highsmith et al. generally suggests mixtures and the examples teach a plurality of oxidizers, e.g. Yoshida et al. >446, is further relevant, showing three oxidizers in "Table 1", "Example 15", e.g. Redecker et al. '485, although not understood in the narrative due to being in the German language, shows examples

with 5AT and a plurality of oxidizers, including zinc peroxide and a plurality of other added conventional oxidizers.

It is well settled that optimizing a result effective variable is well within the expected ability of a person or ordinary skill in the art. In re Boesch, 617 F. 2d272, 205 USPQ 215 (CCPA 1980), In re Aller, 220 F. 2d 454, 105 USPQ 233 (CCPA 1955). Further, where the ingredients are well known and combined for their known properties, the combination is obvious, absent unexpected results, In re Crocket, 126 USPQ 186, In re Pinten, 173 USPQ 801, In re Sussman, 43 CD 518, and In re Susi, 169 USPQ 423. At best, this seems mere optimization of parameters by mixing known ingredients.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-4, 9-10, 27 and 31 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15, 18 and 19 of U.S. Patent No. 6,453,816. Although the conflicting claims are not identical, they are not patentably distinct from each other because of clear overlap. It appears that the additives therein are substantially the same as the additives herein, and the gas generating composition in claim 1 of '816 certainly includes gas generating compositions such as claimed herein.

Response to Arguments

5. Applicant's arguments filed 6/7/2004 have been fully considered but they are not persuasive. Applicant argues unexpected results and these arguments are not persuasive. The claimed combination is obvious and one must consider the extent of unexpected results which is not substantial, if present at all, in the instant application. The evidence relied upon should establish "that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance." Ex parte Gelles, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Also, where the unexpected properties of a claimed invention are not shown to have a significance equal to or greater than the expected properties, the evidence of unexpected properties may not be sufficient to rebut the evidence of obviousness. In re Nolan, 553 F.2d 1261, 1267, 193 USPQ 641, 645 (CCPA 1977). Regarding the double patenting rejection,

the examiner has asserted that the claims overlap and though not identical are not patentably distinct. Also, regardless of the label that Applicant assigns to the composition, its presence in the prior art is sufficient to support and obvious type double patenting rejection and a new use for an otherwise old composition is not patentable.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aileen B. Felton whose telephone number is 703.306.5751. The examiner can normally be reached on Monday-Friday 6:30-4:00, except alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703.306.4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Aileen Felton

AILEEN FELTON
PRIMARY EXAMINER